CRM No. 72077 of 2007 and
CRR No.1083 of 2007

Baldev Singh and others vs. State of Punjab

Present: Mr.Pawan Sharma, Advocate.

Mr.M.C.Berry,Sr.DAG, Punjab.

Mr.R.K.Battas, Advocate.

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The petitioners, five in number, have filed this revision petition impugning their conviction for the offences under Sections 325, 323, 148 , 149 and 34 IPC on different counts. The petitioners after prosecution were convicted for the said offences and sentenced as under:-

1) Baldev Singh U/s 325 IPC:

To undergo RI for two years and to p ay a fine of Rs.200/- and in default of which to further RI for one month.

U/s 323/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

U/s 148/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

2) Sadhu Singh U/s 325 IPC:

RI for two years and to pay a fine of Rs.200/- and in default of which to further RI for one month.

U/s 323/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in

default of which to RI further for one month.

U/s 148/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

3) Sukhbir Singh U/s 325/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

U/s 148/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

4) Rajinder Singh U/s 325/149 IPC:

RI for two years and to pay a fine of Rs.200/- and in default of which to RI further for one month.

U/s 323 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI for further one month.

U/s 148/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

5) Karam Singh U/s 325/149 IPC:

RI for two years and to pay a fine of Rs.200/- and in default of which to RI further for one month.

U/s 323 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

U/s 148/149 IPC:

RI for one year and to pay a fine of Rs.100/- and in default of which to RI further for one month.

They remained unsuccessful in an appeal and the sentence aforementioned was maintained. They have now filed present revision petition. On 5.7.2007 the revision petition was dismissed finding no merit therein but notice however was issued in regard to quantum of sentence or for considering the case of the petitioners for their release on probation.The case was initiated on a complaint made by one Mewa Singh alleging that on 29.3.1994, when he went to his Bara, he found appellants Baldev Singh and Sadhu Singh digging foundation adjoining his Bara. When Mewa Singh stopped them from doing so, then all the appellants attacked the complainant with their respective weapons like Soti and Takua carried by them. Baldev Singh- appellant was armed with Takua whereas other used Soti etc. Brother of the complainant reached the scene on hearing alarm raised by the complainant when all the appellants ran away from the place.

Mr.Sharma, appearing for the petitioners, submits that the petitioners are the first offenders and are facing this criminal proceeding since 1994. They faced protracted trial and were convicted on 2.6.2005. Their appeal was dismissed on 4.6.2007. Mr. Sharma has drawn my attention to a case of **Hari Chand vs. State of Haryana 2004 (2) RCR (Criminal) 378,** where in a case under Section 366 IPC, the accused, who was sentenced to suffer two years imprisonment, was ordered to be released on probation being

the first offender. It appears that the Courts below have not considered the question of applicability of Section 360 of the Code of Criminal Procedure. Hon'ble Supreme Court in **Chandrewshwar Sharma vs. State of Bihar, JT 2000 (2) SC 36,** observed that:-

> "Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so"

In this case also the Courts have overlooked the provisions of Sections 360 and 361 Cr.P.C.. Thus a mandatory duty cast upon the Courts appears to have been ignored. There is nothing to indicate that the provision of Section 360 Cr.P.C. would not apply to the present case. Considering the fact that the petitioners are first offenders and this fight took place over a civil dispute between neighbour, it may be expedient to release the petitioners on probation of good conduct instead of sentencing them. Such powers can be exercised by Appellate Court or High Court etc. while exercising powers in a revision petition in terms of Section 360 (4) of Cr.P.C.

Accordingly while maintaining the conviction of the petitioners, it is directed that they shall be released on probation of good conduct. The petitioners are ordered to be released from imprisonment and after release from imprisonment they would appear before CJM Fatehgarh Sahib to enter into a bond with a

surety to appear and receive the sentence when called upon during the period of one year. The petitioners would appear before the CJM within one week of their release to execute the bond. This order is subject to complying with the conditions aforementioned.

The revision is accordingly disposed of.

(RANJIT SINGH)
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14.9.2007
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